

ORIGINAL

NEW APPLICATION



0000061292

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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2006 SEP 15 P 4: 36
AZ CORP COMMISSION
DOCUMENT CONTROL

T-03228A-06-0586
T-03517A-06-0586

IN THE MATTER OF THE JOINT APPLICATION) DOCKET NO T-03228A-06-_____
OF MATRIX TELECOM, INC. AND) DOCKET NO. T-03517A-06-_____
AMERICATEL CORPORATION FOR)
APPROVAL TO ENCUMBER ASSETS IN)
CONNECTION WITH FINANCING)
ARRANGEMENTS.)

Arizona Corporation Commission

DOCKETED

SEP 15 2006

APPLICATION

DOCKETED BY

WLL

Matrix Telecom, Inc. ("Matrix") and Americatel Corporation ("Americatel") (collectively, "Petitioners"), by its attorneys, hereby respectfully request that the Arizona Corporation Commission ("Commission") grant approval authorizing Petitioners to encumber their assets in the State of Arizona in connection with participation in certain debt financing arrangements, pursuant to a Credit Agreement (the "Credit Agreement") dated September 14, 2006, among Petitioners, EnergyTRACS Acquisition Corp. ("EnergyTRACS", the immediate parent of the Petitioners), HBK Investments, L.P. ("HBK," the Arranger and Administrative Agent), and PCRL III Investments L.P. (the "Lender").¹ The joint Petitioners are affiliate companies that have the same immediate parent company, EnergyTRACS.

The Credit Agreement is structured in two phases. In the first phase, which will last for a maximum of 364 days, Petitioners act as jointly and severally liable co-borrowers for new debt obligations of up to \$90 million, consisting of a \$40 million term loan and up to \$50 million in revolving credit. EnergyTRACS, Platinum Equity, LLC ("Platinum Equity"), Petitioners' ultimate parent, and Matrix Telecom of Virginia, Inc. ("Matrix of Virginia"), a subsidiary of Matrix, are

¹ The Credit Agreement provides 180 days (until March 13, 2007) within which the Petitioners must secure necessary state regulatory approvals.

1 guaranteeing Petitioners' debt. The Petitioners are not pledging or encumbering their assets in
2 connection with the first phase.

3 In the second phase, upon receipt of all necessary regulatory approvals, Petitioners will
4 pledge all of their assets as collateral for this indebtedness and will have their stock pledged as
5 further collateral. Concurrently, the first phase guarantees described above will terminate.

6 In preparation for this second phase, and as required by the Lender, EnergyTRACS will
7 transfer the stock of the Petitioners to a newly-formed and wholly-owned subsidiary of
8 EnergyTRACS. Ultimate control of Petitioners by Platinum Equity will not change as a result of
9 this minor corporate reorganization.

10 Petitioners request this authority under A.R.S. §40-285 to the extent it may be necessary.²
11 Petitioners are not Class A utilities subject to the Commission's Public Holding Company and
12 Affiliated Interest Rules. Moreover, in Arizona, Petitioners provide telecommunications service
13 on a resale basis using physical facilities that are used in providing service in interstate commerce.

14 In support of this Application, Petitioners provide the following information:

15 **I. THE COMPANIES.**

16 **A. Matrix.**

17 Matrix is a Texas corporation with principal offices located at 2207 Commerce Street,
18 Dallas, Texas 75201 (214) 432-1447. Established in 1991, Matrix is a competitive provider of
19 integrated communications services including local, 1+ long distance and toll-free voice services
20 plus a wide range of data services, such as dedicated Internet access, frame relay and point-to-
21 point transmission services, chiefly to enterprise customers. Matrix is authorized to provide
22 service in all 50 states and the District of Columbia. In Arizona, Matrix is authorized to provide
23 (i) competitive resold interexchange telecommunications services per Decision No. 65926 (May
24 16, 2003), (ii) competitive resold local exchange service per Decision No. 68343 (December 9,

25
26
27 ² Although Petitioners are seeking any necessary approval for their participation in these
financing arrangements, Petitioners are doing so without prejudice to their right to assert that this
transaction is beyond the jurisdiction of Arizona Corporation Commission.

1 2005). Matrix is also authorized to provide facilities-based and/or resold interexchange and/or
2 competitive local exchange telecommunications services across the nation. In 2005, Matrix
3 acquired and now serves the small business customer base of Global Crossing
4 Telecommunications, Inc., in Arizona and throughout the nation.³

5 **B. Americatel.**

6 Americatel is a Delaware corporation with principal offices located at 4045 NW 97th
7 Avenue, Miami, Florida 33178 (305) 717-0200. Serving the needs of United States customers with
8 connections to the Latin American and Caribbean regions, Americatel provides international and
9 domestic facilities-based and resold long distance services, including "dial around" casual calling
10 (*i.e.* 1010XXX) service and presubscribed 1+ calling services. In Arizona, Americatel is
11 authorized to provide competitive interLATA and intraLATA resold telecommunications service
12 except local exchange service in Decision No. 61054 (August 6, 1998).⁴ In addition to Arizona,
13 Americatel is authorized to provide intrastate, interstate and international long distance services in
14 each of the 48 contiguous states.

15 **C. Ownership of the Petitioners.**

16 Platinum Equity, a limited liability company formed under the laws of Delaware and
17 headquartered in Beverly Hills, California, has indirectly held 100 percent of the equity of Matrix
18 since 1999, and 95 percent of the equity of Americatel since July 2006. Platinum Equity is a
19 global firm specializing in the merger, acquisition and operation of companies that provide
20 services and solutions to customers in a broad range of business markets, including information
21 technology, telecommunications, and logistics, manufacturing, and entertainment distribution.
22 Since its founding in 1995, Platinum Equity has acquired more than 60 businesses with more than
23 \$12 billion in aggregate revenue at the time of acquisition. Platinum Equity currently holds its
24 interests in Matrix and Americatel through its wholly-owned subsidiary, EnergyTRACS.

25
26
27 ³ See Decision No. 68347 (December 9, 2005)

⁴ Americatel does business as 10123 Americatel and 1010123 Americatel in Arizona, according to Decision No. 61054.

1 **II. DESIGNATED CONTACTS.**

2 The designated contacts for questions concerning this Application are:

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4 Roshka DeWulf & Patten, PLC
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11 and

12 Richard R. Cameron
13 Berin M. Szoka
14 LATHAM & WATKINS LLP
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17 (202) 637-2200 (Tel)
18 (202) 637-2201 (Fax)
19 richard.cameron@lw.com
20 berin.szoka@lw.com

21 Copies of any correspondence should also be sent to the following designated
22 representatives of Matrix and Americatel, respectively:

23 Scott Klopach
24 Vice President of Regulatory Affairs
25 and General Counsel
26 Matrix Telecom, Inc.
27 2207 Commerce Street
Dallas, Texas 75201
(214) 432-1468 (Tel)
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Victor A. Lago
Vice President & General Counsel
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1 **III. DESCRIPTION OF THE TRANSACTION.**

2 Petitioners propose to participate in certain debt financing arrangements pursuant to the
3 Petitioners' September 14, 2006 Credit Agreement, which is structured in two phases. The first
4 phase, currently in effect, will have a maximum term of 364 days. During this phase, Petitioners
5 are jointly and severally liable co-borrowers for debt obligations of up to \$90 million, consisting
6 of a \$40 million term loan and a \$50 million revolving credit facility. This debt is guaranteed by
7 Platinum Equity, EnergyTRACS, and Matrix of Virginia, all affiliates of Petitioners. None of the
8 Petitioners assets are being used to secure the debt in the first phase. During this first phase,
9 Petitioners must secure the necessary regulatory approvals to implement the second phase of the
10 Credit Agreement. If these regulatory approvals have not been secured before that date,
11 Petitioners will be in default under the terms of the Credit Agreement, and face termination of the
12 financing arrangement by the Lender.

13 In the second phase, which will be implemented upon receipt of all necessary regulatory
14 approvals, Petitioners will pledge all of their assets as collateral for this indebtedness, and will
15 have their stock pledged as further collateral. Petitioners will continue to act as co-borrowers, and
16 will remain jointly and severally liable for the entire debt, but the guarantees of the debt by
17 Platinum Equity, EnergyTRACS, and Matrix of Virginia will terminate. This structure will
18 remain in place through the maturity date of the Credit Agreement, which is September 14, 2011.

19 In preparation for this second phase, EnergyTRACS, will transfer the stock of the
20 Petitioners it currently holds to a newly-formed, wholly-owned subsidiary of EnergyTRACS. This
21 new subsidiary will be an intermediate holding company between Petitioners and EnergyTRACS,
22 which will then hold its equity interests in Petitioners indirectly. This minor corporate
23 reorganization, which is required by the lenders, will not affect ultimate control of Petitioners,
24 which will remain with Platinum Equity.

25 The terms of each Financing is expected to be substantially as follows:

26 ***Funding Providers:*** HBK is an alternative investment firm, headquartered in Dallas,
27 Texas, with offices in New York, London, Tokyo, and Hong Kong. HBK commenced operations

1 in October 1991 with the launch of HBK Fund L.P. Today, HBK manages approximately \$10
2 billion in equity capital, ranking it as one of the largest hedge fund managers in the world. The
3 Lender, PCRL Investments, L.P., is an investment fund managed by HBK.

4 **Amount:** \$90 million. This consists of a \$40 million term loan and a \$50 million
5 revolving credit facility.

6 **Maturity:** For the first phase, the debt will be limited to a maximum term of 364 days,
7 or until September 13, 2007. If state approvals are not obtained, all debt must be paid at the end of
8 the 364-day term, and the financing arrangement will terminate. If all necessary regulatory
9 approvals are obtained by March 13, 2007, the parties will implement the second phase of the
10 Credit Agreement, and the financing arrangement will extend until its full maturity date, which is
11 September 14, 2011, or five years from the date of the Credit Agreement.

12 **Interest:** The interest rate in the arrangement will be in line with market conditions
13 and the terms of the arrangements are equivalent to those offered for other, similarly-situated
14 borrowers.

15 **Security:** During the first phase, no assets of the Petitioners will be pledged as
16 collateral for the debt. Rather, both Matrix and Americatel will covenant that they will not pledge
17 their assets to secure any other debt. If this "negative pledge" covenant is breached, this would
18 constitute an event of default under the Credit Agreement. In addition, as explained above, the
19 debt is being guaranteed by Platinum Equity, EnergyTRACS, and Matrix of Virginia, for a
20 maximum of 364 days.

21 As explained above, and assuming all necessary regulatory approvals are obtained, these
22 guarantees will be replaced in the second phase of the Credit Agreement, when each Petitioner
23 will grant a security interest in all of its assets and have its stock pledged, both to the extent
24 permitted by law, as collateral for the debt.

25 **Use of Proceeds:** Petitioners plan to use the proceeds of this financing arrangement to
26 introduce new services, expand into new markets and to allow more consumers to benefit from
27 competitive services more quickly and efficiently, and to refinance existing indebtedness. As

1 jointly and severally liable co-borrowers, the benefits and obligations of the proposed
2 arrangements apply equally to each of the Petitioners, which share mutual and reciprocal
3 obligations and neither will be given any undue advantage over the other.

4 The proposed financing arrangements – and related encumbrance of assets as security –
5 will not change Petitioners' ownership, management or day-to-day operations in Arizona. The
6 financings will not require Petitioners to increase their maximum rates for telecommunications
7 services in Arizona. Platinum Equity will maintain ultimate control over Petitioners. Matrix will
8 continue to provide competitive resold interexchange and resold local exchange services in
9 Arizona. Americatel will continue to provide competitive interLATA and intraLATA resold
10 telecommunications service except local exchange service in Arizona, and will continue to use the
11 names, "10123 AMERICATEL" and "1010123 AMERICATEL." Matrix does not collect any
12 deposits, advance payments or prepayments from Arizona customers. Americatel does have
13 prepaid calling plans and products available to other competitive local exchange carriers and other
14 customers not billed through local exchange carrier billing agreements.

15 IV. PUBLIC INTEREST ANALYSIS.

16 Approving this Application will serve the public interest by enabling Petitioners to better
17 utilize their available funds, to introduce new services, expand into new markets and to allow
18 more consumers to benefit from competitive services more quickly and efficiently. Further,
19 approving these financing arrangements will actively serve the public interest in promoting
20 competition among telecommunications carriers because Petitioners will have the opportunity to
21 strengthen their competitive position through access to greater financial resources. Petitioners will
22 have a greater ability to bring high-quality competitive telecommunications services to Arizonans.

23 The terms and conditions of the Credit Agreement, as described, are advantageous to
24 Petitioners, because Petitioners' combined financial resources and negotiating strength allowed
25 them to obtain more advantageous financial terms than either would have been able to obtain
26 independently, and the Credit Agreement is the result of extensive negotiations in a highly-
27 competitive financing market. The structuring of the transaction in two phases allows Petitioners

1 to obtain necessary short-term financing immediately, while providing Petitioners the necessary
2 time to obtain the state regulatory approvals necessary for Petitioners to issue debt with a term
3 greater than one year and to secure that debt by pledging their assets. During the first phase,
4 because Platinum Equity is guaranteeing the Petitioners' debt, the Lender will have the ultimate
5 recourse to the Petitioners' common parents and will therefore be less likely to seek recourse
6 against either Petitioner should the other default.

7 Both Matrix and Americatel compete in Arizona and other markets with numerous other
8 interexchange carriers and enhanced service providers as well as the incumbent local exchange
9 carrier and other competitive local exchange carriers. Both Petitioners are non-dominant carriers,
10 and are not subject to rate of return regulation. In addition, because of the highly competitive
11 environment in which both companies operate, the rates charged customers are subject to market
12 discipline and the services offered generally are available from numerous other carriers. As a
13 result, the source of funds and capital structure of Matrix and Americatel would have little effect
14 on customers in Arizona or elsewhere. In the unlikely event that the capital structure for either
15 company becomes too costly and rates rise, customers may simply migrate to other carriers with
16 preferred rates. Thus, any adverse consequences from the financing decisions impact
17 shareholders, not customers, and any favorable consequences benefit both its shareholders and
18 consumers through higher profits, lower rates, and better services.

19 Moreover, because the public interest is best served by assuring the presence of numerous
20 telecommunications competitors in Arizona, it is important to provide such competitors with the
21 flexibility to arrange financing in the manner they deem most appropriate to carry on business so
22 long as there is no adverse impact on the public. To deny such flexibility would discourage new
23 competitors from entering the state and would encourage existing competitors in the state to seek a
24 more favorable regulatory environment elsewhere, neither of which would enhance the public
25 interest. Given the challenges facing competitive telecommunications carriers, the availability of
26 funds to Petitioners in this manner would benefit Arizona consumers.

27 Finally, these financing arrangements will be transparent to consumers and consumers will

1 benefit from the continued receipt of quality telecommunications services that are priced
2 competitively. These arrangements will not impair the financial status of Petitioners, would not
3 impair its ability to attract capital nor would it impair the ability of Petitioners to provide safe,
4 reliable and adequate service.

5 **V. CONCLUSION.**

6 For the reasons stated above, Petitioners respectfully submit that the public interest,
7 convenience and necessity would be furthered by granting this Application. Accordingly,
8 Petitioners respectfully request that the Commission approve, to the extent necessary, the
9 encumbrance of their Arizona assets in connection with their participation in those financing
10 arrangements described herein and further relief as the Commission may deem appropriate.

11 RESPECTFULLY SUBMITTED THIS 15th day of September, 2006.

12 **MATRIX TELECOM, INC. AND**
13 **AMERICATEL CORPORATION**

14
15 By: 

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6 Of Counsel

7 Scott Klopach
8 Vice President of Regulatory Affairs
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10 Matrix Telecomm, Inc.

11 Victor A. Lago
12 Vice President & General Counsel
13 Americatel Corporation

14 Original and 15 copies of the foregoing
15 filed this 15th day of September 2006 with:

16 Docket Control
17 Arizona Corporation Commission
18 1200 West Washington Street
19 Phoenix, Arizona 85007

20 Copies of the foregoing hand-delivered/mailed
21 this 15th day of September, 2006 to:

22 Lyn A. Farmer, Esq.
23 Chief Administrative Law Judge, Hearing Division
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25 1200 West Washington Street
26 Phoenix, Arizona 85007

27 Christopher C. Kempley
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By 

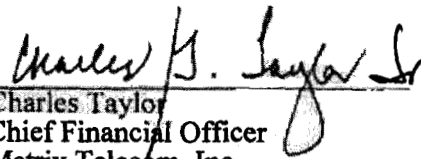
EXHIBIT

"A"

VERIFICATION

I, Charles Taylor, am Chief Financial Officer of Matrix Telecom, Inc. and am authorized to represent it and its affiliates, and to make this verification on their behalf. The statements in the foregoing document relating to Matrix Telecom, Inc. and its affiliates, except as otherwise specifically attributed, are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.


Charles Taylor
Chief Financial Officer
Matrix Telecom, Inc.

Subscribed and sworn to before me this 15th day of September, 2006.


Notary Public

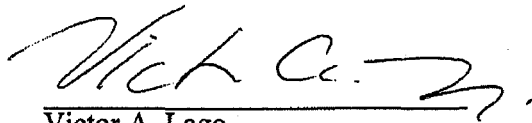


My Commission expires: August 12, 2007

VERIFICATION

I, Victor A. Lago, am Vice President & General Counsel at Americatel Corporation and am authorized to represent it and its affiliates, and to make this verification on their behalf. The statements in the foregoing document relating to Americatel Corporation and its affiliates, except as otherwise specifically attributed, are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.



Victor A. Lago
Vice President & General Counsel
Americatel Corporation

Subscribed and sworn to before me this 15th day of September 2006.


Notary Public

My Commission expires: March 22, 2009

